IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31-10-2007

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THE HON'BLE MR.JUSTICE K. CHANDRU

WRIT PETITION NO:11877 of 1998

Thedavoor Primary Agricultural
Bank Ltd (2635) rep by its
President T A Thangavelu
Thedavoor, Salem District
.... Petitioner

vs

1. Registrar of Co-operative
   Societies, NVN Maligai,
   Chennai-10

2. Deputy Registrar of Co-operative
   Societies, Attur Range, Attur
   Salem District

3. Special Officer, Salem District
   Central Co-operative Bank Ltd
   Salem .... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue Writ of Certiorari to call for the records of the 2nd respondent dated 24.7.1998 and made in Na Ka No.7861/97 Ve Se Sa and the consequential order of the third respondent dt 31.7.1998 and made in Na Ka No.1501/98 A-15 and quash the order of the second and third respondent as illegal.

For petitioner : Mr.G. Ravishankar

For 1st respondent : MsBhavani Subbarayan, AGP

For 3rd respondent : Mr.M.R. Raghavan

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ORDER

The petitioner is the President of the petitioner society and the Society had entered into a Settlement under Section 12(3) of the Industrial Disputes Act, 1947 [for short,'I.D. Act'] regarding wages of the employees. The action of the then Board of Directors entering into the Settlement was questioned by the authorities of the Co-operative Department and also refused to implement the Settlement. They have come up before this Court with a prayer for direction that the Settlement cannot be interfered with by any authority of the Department.

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2. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the 1st respondent and Mr.M.Raghavan for the 3rd respondent.

3. The prayer in this writ petition is misconceived in the light of the Larger Bench decision of this Court reported in 2006 (4) C.T.C. 689 [K.Marappan v. District Registrar of Co-operative Societies, Namakkal] and, therefore, the writ petitions is not maintainable.

4. However, learned counsel for the petitioner relies upon the judgment of this Court made in W.P. No.7370 of 2004disposed on 05.11.2004, wherein such an interference with the Settlement arrived at under Section 12(3) of the I.D. Act was made by the learned Judge of this Court. During the course of argument, the learned counsel placed heavy reliance upon the judgment of this Court in W.P. No.3572 of 1997, disposed on 20.11.2006. In both cases, the subsequent pronouncement of the Division Bench reported in 2002 (4) C.T.C. 385 [L.Justine and another v. Registrar of Co-operative Societies, Chennai] were not referred to.

5. On the contrary, the decision cited by the learned counsel reported in 1992 (1) L.L.J. 747 [Tiruchirapalli Hirudayapuram Coop. Bank Employees Union, etc. v. Jt. Registar of Coop. Societies, Tiruchirapalli, etc.] came to be doubted by another learned Judge of this Court in a batch of writ petitions and P.Shanmugam, J. dismissed the writ petitions on the ground that if the Settlement does not conform to the norms fixed by the Registrar and the order by the Registrar is not followed and, therefore, there is no obligation for the Society to honour the said Settlement. In those cases, even if there is any refusal to honour the said Settlement, the course open to the workman is to raise a dispute and establish the legal entitlement to claim under the said Settlement. The learned Judge disagreed with the proposition laid down in the decision reported in 1992 (1) L.L.J. 747 (cited supra). He also held that in the context of the employees and the Management indiscriminately raising the wages of workmen without reference to the financial loss and the directions issued by the Registrar and the Government, the circumstances warranted in granting such judgment. The learned Judge also noted that Rule 149 of the Tamil Nadu Co-operative Societies Rules enables the Society to have an approved bye-law relating to service conditions and that rule as having come into force from the year 1995, any service condition of the employees must be made only in terms of the bye-laws framed thereunder and as approved by the competent authority and to that extent, the power of the employees to negotiate and arrive at the Settlement stand excluded. The writ appeals against the said order in a batch of writ petitions, were also came to be dismissed along with the Justine's case (cited supra) and the same has become final. Therefore, there is no scope for the petitioner now to contend on the basis of two unreported decisions, which undoubtedly had not taken note of the subsequent development of law in which these issues were squarely answered by a learned Judge and appeals were also dismissed.

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6. Be that as may be. The Supreme Court in a recent decision reported in JT 2007 (2) SC 566 [Ghaziabad Zilla Sahkari Bank Ltd. v. Additional Labour Commissioner and others] dealt with a similar question arising out of the U.P. Co-operative Societies Act viz-a-vi U.P. Industrial Disputes Act. In that context, the following passage found in paragraphs 66 to 68 of the judgment of the Supreme Court can be usefully reproduced below:

Para 66: "The ALC, in law is not competent to declare the statutory order of the Registrar, CS, under Section 128 of the CS Act to be 'not proper' and thereby to disregard the same. An order under Section 128 is final and binding and cannot be questioned in any law in view of Section 102 and even otherwise on general principles of law, an authority under the UPID Act cannot ignore or wish away the statutory consequences of the statutory order passed by the Registrar under Sections 128, 102 etc. of the UP Co-operative Societies Act.

Para 67: Also the Registrar's directions and order dated 07.3.2001, 19.3.2001 and 22.6.2001 requiring BOD to reconsider its (offending) resolutions and finally annulling the same in exercise of his powers under Section 128 are statutory in nature. They are still valid and occupy the field. They become final and binding under Section 102 in because, no appeal was filed under Section 98 of the CS Act and no arbitration reference was made under Sections 70 and 71 of the CS Act.

Para 68: The ALC and the High Court wrongly appreciated the Secretary's functions and procedure under Rule 130 as subsisting rather than merely supplementing the Chairman's power and procedure, including suo motu power and procedure, under Section128 of the Act read with Rule 131..."

Also, the passage found in paragraph 76 reads as follows:

Para 76: "The present dispute does not relate to said Act, 1947 but it is related to the provisions contained under the Societies Act, 1965 as well as where a circular issued by the Registrar of Cooperative Societies and more specifically Regulation 42 of Service Rules, 1975. Therefore, in our opinion, the private settlement made on 21.3.2001 does not fall under 6H(1) of the U.P. Act, 1947. In other words, the payment of exgratia is an incentive for an employee for his good work. Therefore, it is governed by Regulation 42(2) that any cooperative society may also grant pecuniary incentive only with the prior permission of the Registrar to any employee or a class of employees for outstanding performance. It clearly provides that for payment

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of ex-gratia, permission of the Registrar is must. Regulation 42 is itself very clear and is not in conflict with any of the provisions of the U.P. Act, 1947. The respondents themselves admitted in their counter affidavit that the settlement was not entered into during conciliation proceeding. Therefore, the said private settlement could not have been legally enforced being an invalid settlement. No private settlement can give a legal enforceable right. It is wrong to suggest that payment of ex-gratia amount to the employees over and above their salary is the matter of U.P. Act, 1947. It is very clear and there is special provision in Rule 42 to the Service Rules, 1975. The cooperative society is a State Government subject and every State Government has right to make laws in their respective States and there are different cooperative societies Acts in different States."

7. In the light of the above, the writ petition fails and the same shall stand dismissed. However, there will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sr

To

1. The Registrar of Co-operative
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   Chennai-10

2. The Deputy Registrar of Co-operative
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   Salem District

3. The Special Officer, Salem District
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   Salem

W.P.No.11877/1998

VC (CO)
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